

DOCKET FILE COPY ORIGINAL



1850 M Street, N.W., 11th Floor
Washington, D.C. 20006
Telephone: (202) 828-7453

RECEIVED

MAY - 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Jay C. Keithley
Vice President
Law and External Affairs
United Telephone Companies

May 3, 1993

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20036

RE: In the Matter of 800 Data Base Access Tariffs, CC Docket No. 93-129

Dear Ms. Searcy:

Attached are the original and five copies of an Emergency Application for Review in the proceeding referenced above.

Sincerely,

A handwritten signature in cursive script that reads "Jay C. Keithley".

Jay C. Keithley

Attachment

JCK/mlm

No. of Copies rec'd
List A B C D E

A handwritten number "045" written in a large, stylized cursive script.

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
800 Data Base Access Tariffs)

CC Docket No. 93-129

EMERGENCY APPLICATION FOR REVIEW

INTRODUCTION

The United Telephone companies ("United"), pursuant to Rule 1.115, 47 C.F.R. Section 1.115, request the Commission to review and reverse that portion of the Common Carrier Bureau's April 28, 1993 Order ("Order") that suspended the amount of United's basic 800 database query rate that exceeds .67 cents per query for five months and ordered United to file tariff revisions reflecting this partial suspension on April 29, 1993.¹ United asserts that the specified portion of the Order is arbitrary, capricious and unlawful.²

1. In the Matter of 800 Data Base Access Tariffs, CC Docket 93-129, Order, (Common Carrier Bureau), DA 93-491, released April 28, 1993 at pars. 31 and 32. The required tariff revisions were filed on April 29, 1993 under Transmittal No. 320.

2. United, on April 29, 1993, filed a Petition for Stay with the Bureau. Also on the 29th, an identical Petition was filed with the Commission. To date, no action has been taken on either Petition. Accordingly, United now requests the Commission to review the Bureau's Order and reverse the Bureau's decision suspending that amount of United's basic 800 database query rate that exceeds .67 per query.

United requests that the Commission conduct the review on an emergency, expedited basis. In compliance with the Bureau's Order, United revised its basic 800 database query rates to .67 cents per query and is now charging that rate to Interexchange Carriers. United asserts that a .67 cent rate does not compensate United for costs unreasonably incurred to provide 800 database access services. Rather, the rates that United filed on March 1, 1993 were appropriate, lawful and reflective of the reasonable costs specifically incurred for providing 800 database access service.

By refusing to investigate the reasonableness of United's 800 database access costs and arbitrarily reducing United's rate, the Bureau's Order establishes a situation whereby United has been forced to uneconomically price 800 database access service at a rate that does not recover the cost of the service. The Bureau's arbitrary actions have made it necessary for United to recover these costs from other services. The result is that the cost causer is not fully paying the costs of 800 database access service. Rather, customers of other access services are making up a revenue shortfall created by the forced reduction of 800 database query rates. This situation should not be allowed to continue.

ARGUMENT

The Order suspended for one day the basic 800 database query rate of all the LECs, including United, that own their own

Service Control Point ("SCP") and allowed the rates to become effective as filed, subject to an investigation and accounting order.³ Under Section 204 of the Communications Act, 47 U.S.C. Section 204, the Commission may order refunds, with interest, of such portion of these rates, if any, ultimately determined through the investigation to be unlawful. However, rather than allowing United's entire rate to become effective as filed, subject to an investigation and accounting order, the Common Carrier Bureau, without affording United notice or hearing, further ordered that the amount of United's basic 800 database query rate that exceeds .67 cents per query be suspended for five months pending investigation and that United must file tariff revisions reflecting this partial suspension on April 29, 1993.⁴

The Bureau based its decision wholly on the fact that United's proposed basic 800 database query rate was significantly higher than the average industry rate.⁵ The Order did not analyze United's cost support, cost support that even MCI acknowledges was the best offered by any LEC. See, United Telephone Companies FCC Tariff No. 5, Transmittal No. 316, MCI

3. See, Order at pars. 24 - 27 and Appendix B.

4. Order at pars. 31 and 32. The Bureau's order also directed the GTE Operating Companies and GTE Systems Telephone Companies (collectively "GTOCs") to lower their basic 800 database query rate to .67 cents per query pending investigation.

5. In this case the industry included the Bell Operating Companies (BOCs), the GTOCs, Southern New England Telephone Company and United.

Petition For Rejection and Suspension and Investigation, filed March 18, 1993, at p. 10. And, more significantly, the Order did not attempt to analyze United's demand data or to compare United's demand data with "industry" demand data.

The Commission must reverse the arbitrary and unlawful action of the Bureau. The bifurcated approach adopted by the Bureau, without conducting an investigation of the reasonableness of the costs used, in allowing all the filed rates to become effective except that amount in excess of .67 cents per query is arbitrary, capricious, and unreasonable. The rationale behind allowing rates to become effective following suspension, and then subjecting the rates to an investigation and accounting order, is to allow the Commission sufficient time to determine the lawfulness of the rates filed, while at the same time ensuring that the ratepayers will not be damaged if the rates, or a portion thereof, are ultimately determined to be unjustified. To follow this very reasonable and rational procedure only as to a portion of the rates, without having concluded any investigation of the reasonableness and appropriateness of the costs underlying the rates, cannot be justified.

The Bureau's use of a purported statistical analysis and a mean rate cannot stand as a substitute for an investigation. The Bureau attempts to justify this procedure "since all LECs are

disclosure similar data base systems #6 United does not dispute

United's cost, but because of United's size. Accordingly, the Bureau's action is arbitrary and unreasonable and cannot be allowed to stand.

Furthermore, it is not entirely clear that costs are the same, notwithstanding that similar systems are being deployed. As United noted in its Reply to the Petitions to Reject its 800 database tariff filing, United does not believe it has a duty to review other LECs' costs.⁸ However, United has reviewed the other LECs' filings and is at a loss to explain precisely why its rates are different. There are a few obvious differences in costs that may explain some of the difference in rates. For

Given the much larger demand that NYNEX and the other BOCs have as compared to United and the apparent cost difference from just this one item, it becomes more understandable why United's rates are higher than the other LECs.

Finally, as noted above, the Bureau's Order has resulted in pricing United's basic 800 database query rate substantially below the rate necessary to recover costs. To remain financially whole, United has had to recover these costs from the users of other access services.

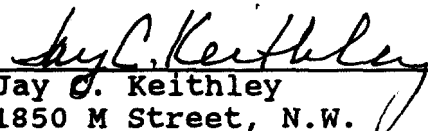
CONCLUSION

Wherefore, United requests that the Commission conduct an expedited review of the Bureau's Order and reverse the Bureau's decision to suspend that amount of United's basic 800 database query rate that exceeds .67 cents per query.

Respectfully submitted,

UNITED TELEPHONE COMPANIES

By


Jay C. Keithley
1850 M Street, N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

May 3, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 3rd day of May, 1993, sent via Hand Delivery, or U.S. First Class Mail, postage prepaid, a copy of the foregoing "Emergency Application for Review" in the Matter of 800 Data Base Access Tariffs, filed this date with the Secretary, Federal Communications Commission, to the persons listed below.

Gregory J. Vogt*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

Cheryl Tritt, Chief*
Common Carrier Bureau
Federal Communications Commission
Room 500
Washington, D.C. 20554

Judith A. Nitsche*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

Kathleen Levitz*
Deputy Bureau Chief, Policy
Federal Communications Commission
Room 500
Washington, D.C. 20554

Steven Funkhouser*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

ITS*
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

Christopher J. Frentrop*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

Kathleen Abernathy*
Legal Advisor
Federal Communications Commission
Room 826
Washington, D.C. 20554

Colleen Boothby*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

Cindy Schonhaut
Metropolitan Fiber Systems, Inc.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Mark Uretsky*
Tariff Division
Federal Communications Commission
Room 518
Washington, D.C. 20554

James B. Gainer
Ann Henkener
PUC of Ohio
180 East Broad Street
Columbus, OH 43266

Robert C. Atkinson
Teleport Communications Group, Inc.
1 Teleport Drive, Suite 301
Staten Island, NY 10311

Randall B. Lowe
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088

James S. Blaszk
Francis E. Fletcher, Jr.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, D.C. 20005

Andrew D. Lipman
Jonathan E. Canis
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Bob F. McCoy
Joseph W. Miller
John C. Gammie
P.O. Box 2400
One Williams Center, Suite 3600
Tulsa, OK 74102

Michael L. Glaser
Hopper & Kanouff, P.C.
1610 Wynkoop, Suite 200
Denver, CO 80202

William Page Montgomery
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108-2603

Heather Burnett Gold
Assoc. for Local Telecommunications
Services
1150 Connecticut Avenue, Suite 1050
Washington, D.C. 20036

Carol R. Schultz
MCI Telecommunications, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

* indicates Hand Delivery


Melinda L. Mills